Supreme Court, U.S.
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No. 00-502

IN THE

Supreme Court of the United States

JOSHUA W. AND ANITA O.,

Petitioners,

v.

BOARD OF EDUCATION WICHITA PUBLIC SCHOOLS U.S.D. 259, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT ANDOVER U.S.D. 385

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QUESTIONS PRESENTED

Respondent Andover U.S.D. 385 submits that the correct issue is whether the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, obligates it to provide Petitioner Joshua W. with a free appropriate public education even though he never resided in the Andover School District?

STATEMENT OF THE CASE

On February 1, 1996, petitioners sent correspondence to the Superintendent of Andover U.S.D. 385 requesting it be joined in a due process hearing against the Wichita Public Schools U.S.D. 259 "in the event that it is determined that [Andover] is ultimately responsible for Joshua Wilson." (Andover's Motion to Dismiss, Exhibit C.) On February 2, 1996, Respondent informed Petitioners that it would not join the pending hearing and that the governing rules and regulations regarding the right to request a due process hearing (K.S.A. § 79-972 *et seq.* and K.A.R. § 91-12-46 as well as 34 C.F.R. § 300.506) do not apply when a student is not enrolled in the district. (Andover's Motion to Dismiss, Exhibit D.)

It is undisputed that Joshua W. has never resided in the Andover School District; he has never been enrolled and he has never requested to be enrolled in the Andover School District. (Petitioners' Brief at 14.) It is also undisputed that Petitioners never asked Andover to evaluate Joshua W. or to prepare an Individualized Education Program (IEP) for him. (Petitioners' App. F at 39a.)

On April 14, 1997, Respondent filed a Motion to Dismiss the claims against them as well as a Motion for Sanctions.[1] In its June 10, 1997, Memorandum and Order, the District Court of Kansas granted Respondents' Motion to Dismiss holding that

> [d]ismissal of the present action would appear appropriate, since the complaint itself establishes

1. Petitioners incorrectly set forth the date this motion was filed as April 4, 1997.

> that Joshua has never resided in the Andover School District. Kansas law clearly establishes that the local institution responsible for complying with the terms of the IDEA is the local school district in which the student actually resides.

(Petitioners' App. F at 42a.) The Court denied Respondent's Motion for Sanctions based on its determination that the "facts at least provide some potential justification for concluding that the action taken against the Andover defendants was not undertaken for any improper purpose." (*Id.* at 44a.) Petitioners filed a Motion to Reconsider the Court's Order dismissing Respondents on June 24, 1997. In its Order of July 22, 1997, the Court denied Petitioners' Motion, holding that their claims against the Andover defendants were barred by their own admissions regarding Joshua's residency. (Petitioners' App. E at 34a.)

On August 12, 1999, Petitioners appealed the decisions of the District Court to the Tenth Circuit Court of Appeals. In a unanimous opinion affirming the judgment of the District Court, the Tenth Circuit held that Joshua W.'s residency controls the issue of which school district is responsible for his special educational needs. (Petitioners' App. A at 9a.) Because Petitioners never pled any residency in the Andover U.S.D., Andover could not be held responsible. (*Id.*) The Court also determined that Andover was "neither a necessary nor indispensable party for purposes of [Fed.R.Civ.P.19]." (*Id.* at 8a.)

REASON FOR DENYING THE WRIT

I. RESIDENCY CONTROLS THE ISSUE BEFORE THE COURT

Andover U.S.D. 385 has no obligation to provide Joshua W. with a free appropriate public education. Under Kansas law, residency with a parent who lives within the jurisdiction of the school district controls which school district is responsible for providing the free appropriate public education. *See* K.S.A. § 72-1046. The circuits are in agreement on this point. *Catlin v. Sobol*, 93 F.3d 1112, 1119 (2d Cir. 1996); *Neisz v. Portland Public School District*, 684 F. Supp. 1530, 1532 (D. Oregon 1988). It is uncontested that at no time has Joshua W. lived in the Andover School District or with a parent or person acting as a parent living the Andover School District. (Petitioners' Brief at 14-15.) Furthermore, because residency provides a limitation on the scope of a school district's duty under the IDEA, the Andover School District had no obligation to seek out and provide Joshua W. with assistance. *Susan R.M. v. Northeast Independent School District*, 818 F.2d 455 (5th Cir. 1987); *Hall v. Freeman*, 700 F. Supp. 1106 (N.D. Ga. 1987). The circuits are in agreement on this point as well. *Hooks v. Clark County School District*, 228 F.3d 1036, 1039 (9th Cir. 2000); *Smith v. Special School District No. 1*, 184 F.3d 764, 767 (8th Cir. 1998).

Based on the residency laws of the State of Kansas, the Andover School District owes no duty to Joshua W. or Anita O. and their writ to review the judgment of the United States Court of Appeals for the Tenth Circuit, affirming the Kansas District Court's judgment dismissing Andover as a party, should be denied.

CONCLUSION

Petitioners admit that Joshua W. never resided within the Andover School District. Petitioners' request for a writ of certiorari is limited to the issue of whether or not the judgment of the United States Court of Appeals for the Tenth Circuit, upholding the District Court of Kansas' judgment dismissing Andover as a party, was appropriate. The Kansas residency laws are clear: A child may attend school in the district in which the child lives if the child lives with a resident of the district and the resident is a parent, or person acting as a parent, of the child. K.S.A. 72-1046(a). There is no split in the circuits on this issue. Because Petitioners admit that Joshua W. did not meet this eligibility requirement, because Joshua W. has never been enrolled in the Andover School District, the Tenth Circuit's judgment dismissing Andover as a party to this action was clearly appropriate.

Respondent Andover U.S.D. 385 respectfully requests that the Petitioners' Writ of Certiorari be denied.

Respectfully submitted,

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